Wong Hong Meng (as a voting member and an observant member of the Calvary Church (Assemblies of God) Kuala Lumpur representing a class of members of Calvary Church (Assemblies of God) Kuala Lumpur) & Ors v Prince Guneratnam & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R2–24–76 OF 2009
AZIAH ALI J
11 MAY 2010

Civil Procedure — Injunctions — Erinford injunction — Whether Erinford injunction ought to be granted

Civil Procedure — Injunctions — Interlocutory injunction — Injunction to prohibit 2010 AGM from taking place and to prohibit first and second defendants from excluding plaintiffs as members of church — Whether injunction could be enforced against first and second defendants — Whether there were serious questions to be tried — Whether balance of convenience lay in favour of plaintiffs

At all material times, the first to sixth plaintiffs were the members of the Calvary church, Kuala Lumpur ('the church') while the seventh plaintiff was an associated member representing a class of members from the church. The plaintiffs were primarily dissatisfied with the management of the church accounts and in particular with the transfer of funds amounting to RM1.9m to the Calvary International Ministries ('CIM'), an unregistered organisation allegedly owned by the first defendant, a senior pastor of the church. On 16 April 2009, the plaintiffs submitted seven resolutions to be tabled at the church's annual general meeting on 19 June 2009 ('the 2009 AGM') but six of the seven resolutions were rejected by the second defendant, the Board of Deacons in which the first defendant was chairman. The plaintiffs averred that the second defendant had acted in breach of rule IX of the constitution of the church ('the constitution') in preventing the said resolutions from being tabled for consideration by the members at the 2009 AGM. When the plaintiffs brought this breach to the attention of the Majlis Agung the Assemblies of God of Malaysia ('the third defendant'), the latter accepted and endorsed the decision of the second defendant. The plaintiffs and other concerned members of the church then gave notice to the second defendant to hold an EGM to address five tabled resolutions but the second defendant rejected the request. The third defendant declined to intervene in this matter on the grounds that this was an internal church matter. On 7 March 2010, the church issued a preliminary notice for the 2010 AGM to be held on 23 April 2010. However,

the names of the plaintiffs were excluded from the list of voting members or associate members, without the plaintiffs being given notice or reasons for the said exclusion. The plaintiffs commenced an action against the defendants for acting in breach of the constitution and thereby violating the plaintiffs' rights as members to vote on the said resolutions at the 2009 AGM. This suit arose out of the plaintiffs' grievances with the conduct of the first and second defendants relating to the management of the church and its assets, the conduct of the 2009 AGM and the appointment of the first defendant, which reappointment was allegedly in breach of the constitution. By this action the plaintiffs sought, inter alia, an order for the EGM to be held in order to allow the plaintiffs to table the resolutions refused by the first and second defendants in the 2009 AGM and other reliefs. The plaintiffs then applied for the instant interlocutory injunction wherein it was submitted on the issue of balance of convenience that if the 2010 AGM was allowed to proceed, then the plaintiffs' action will be rendered nugatory and the plaintiffs' rights as members would be prejudiced. The purpose of the interlocutory injunction was to prohibit the 2010 AGM from taking place and to prohibit the first and second defendants from excluding the plaintiffs from exercising their rights and privileges of membership. By way of this injunction the plaintiffs sought, inter alia, an order prohibiting the first and second defendants from disposing of assets of the church and to limit financial transactions by the first and second defendants. The second defendant submitted that as it was not a legal entity or a natural person an injunction cannot be enforced against it. The first defendant submitted that as the chairman of the second defendant, all administrative powers including the power to convene an AGM vested in the second defendant and that since no injunction could be enforced against the second defendant, likewise an injunction ought not to be granted against the first defendant. The defendants also submitted that the constitutional rights and interest of the 1,400 members of the church had to be weighed against individual complaints of the seven plaintiffs.

Held, allowing the application for Erinford injunction and dismissing the interlocutory injunction:

(1) The second defendant, a body appointed by members of the church and with the first defendant as its chairman, has been entrusted to administer the church's affairs and the church is governed by its constitution. The church is an association of individuals or persons and is a lawful body subject to the Societies Act 1966. As such, the second defendant and by extension the first defendant, as its chairman, are both amenable to an injunction (see para 19).

(2) It would be unjust to the other 1,400 members of the church, who had a right to expect an AGM to be held and to vote, to prohibit the convening of the 2010 AGM. The interests of the majority had to weighed against the seven plaintiffs (see para 22).

(3) The plaintiffs had failed to show that there was any imminent danger that assets would be disposed of. There was no evidence to show that since the filing of this action until this application for an interlocutory injunction was made, that the first defendant had disposed of assets of the church or intended to do so. As such, the plaintiffs had not shown any serious issues to be tried and there were insufficient reasons to prohibit the first and second defendants from convening the 2010 AGM (see paras 21, 23 & 25).

(4) The application for the Erinford injunction, which was subsequently filed by the plaintiffs, was allowed pending the disposal of the plaintiffs' appeal against the decision refusing the application for the interlocutory injunction (see para 26).

[Bahasa Malaysia summary

Pada kesemua masa yang material, plaintif pertama hingga keenam merupakan ahli Gereja Calvary, Kuala Lumpur ('gereja') dan plaintif ketujuh merupakan ahli bersekutu mewakili sekumpulan ahli daripada gereja tersebut. Plaintif-plaintif tidak berpuas hati terutamanya dengan pengurusan akaun gereja tersebut dan khususnya dengan pemindahan dana berjumlah RM1.9 juta kepada Calvary International Ministries ('CIM'), sebuah organisasi tidak berdaftar yang didakwa dipunyai defendan pertama, seorang paderi senior gereja tersebut. Pada 16 April 2009, plaintif-plaintif menyerahkan tujuh resolusi untuk dibentangkan pada mesyuarat tahunan gereja tersebut pada 19 Jun 2009 ('AGM 2009') tetapi enam daripada tujuh resolusi ditolak oleh defendan kedua, Lembaga Paderi-paderi yang mana defendan pertama merupakan pengerusinya. Plaintif-plaintif menegaskan bahawa defendan kedua telah melanggar peraturan IX Perlembagaan gereja tersebut ('perlembagaan') dalam menghalang resolusi-resolusi tersebut daripada dibentangkan untuk dipertimbangkan oleh ahli-ahli semasa AGM 2009. Apabila plaintif-plaintif membawa pelanggaran ini kepada Majlis Agung the Assemblies of God of Malaysia ('defendan ketiga'), ia menerima dan mengendorskan keputusan defendan kedua. Plaintif-plaintif dan ahli-ahli lain gereja yang prihatin kemudiannya memberi notis kepada defendan kedua untuk mengadakan suatu EGM bagi mengutarakan lima resolusi yang dibentangkan tetapi defendan kedua menolak permohonan tersebut. Defendan ketiga tidak mahu campur tangan dalam perkara ini atas dasar bahawa ini merupakan hal dalaman gereja tersebut. Pada 7 Mac 2010, gereja mengeluarkan notis awalan agar AGM 2010 diadakan pada 23 April 2010. Tetapi, nama-nama plaintif dikeluarkan daripada senarai ahli-ahli pengundi atau ahli-ahli bersekutu, tanpa memberikan plaintif-plaintif notis atau sebab-sebab nama mereka dikeluarkan. Plaintif-plaintif memulakan tindakan terhadap defendan-defendan kerana melanggar perlembagaan tersebut dan oleh itu mencabul hak plaintif-plaintif sebagai ahli untuk mengundi resolusi-resolusi tersebut pada AGM 2009. Guaman ini berbangkit daripada

kilanan plaintif-plaintif dengan tindakan defendan pertama dan kedua berkaitan pengurusan gereja dan asetnya, pengendalian AGM 2009 dan pelantikan defendan pertama, yang mana pelantikan semula itu didakwa melanggar perlembagaan. Melalui tindakan ini, plaintif-plaintif memohon, antara lain, suatu perintah agar EGM diadakan untuk membenarkan plaintif-plaintif membentangkan resolusi-resolusi yang ditolak oleh defendan-defendan pertama dan kedua pada AGM 2009 dan relief-relief lain. Plaintif-plaintif kemudiannya memohon injunksi interlokutori segera di mana dihujahkan bahawa atas isu imbangan kemudahan bahawa jika AGM 2009 itu dibenarkan diteruskan, maka tindakan plaintif-plaintif akan menjadi tidak berguna dan hak-hak plaintif-plaintif sebagai ahli akan diprejudiskan. Tujuan injunksi interlokutori adalah untuk menghalang AGM 2009 berlangsung dan menghalang defendan pertama dan kedua daripada menyingkirkan plaintif-plaintif daripada melaksanakan hak-hak dan keistimewaan keahlian mereka. Menerusi injunksi ini, plaintif-plaintif memohon, antara lain, suatu perintah menghalang defendan pertama dan kedua daripada menjual aset-aset gereja dan menghadkan transaksi kewangan defendan pertama dan kedua. Defendan kedua menghujah bahawa ia bukannya entiti sah atau perseorangan dan suatu injunksi tidak boleh dilaksanakan terhadapnya. Defendan pertama menghujah bahawa sebagai pengerusi defendan kedua, kesemua kuasa pentadbiran termasuk kuasa untuk mengadakan suatu AGM terletak pada defendan kedua dan memandangkan tiada injunksi boleh dilaksanakan terhadap defendan kedua, begitu juga suatu injunksi tidak harus dibenarkan terhadap defendan pertama. Defendan-defendan juga menghujah bahawa hak-hak dan kepentingan perlembagaan 1,400 ahli gereja tersebut harus diimbang dengan aduan-aduan invidu ketujuh-tujuh plaintif.

Diputuskan, membenarkan permohonan injunksi Erinford dan menolak permohonan injunksi interlokutori:

(1) Defendan kedua, sebuah badan yang dilantik oleh ahli-ahli gereja tersebut dan dengan defendan pertama sebagai pengerusinya, telah diamanahkan untuk mentadbir hal ehwal gereja tersebut dan gereja itu ditadbir oleh perlembagaannya. Gereja adalah persatuan bagi individu atau orang perseorangan dan merupakan badan sah tertakluk kepada Akta Pertubuhan 1966. Maka, defendan kedua menerusi defendan pertama sebagai pengerusinya bertanggungan kepada suatu injunksi (lihat perenggan 19).

(2) Adalah tidak adil kepada 1,400 ahli gereja yang lain yang mempunyai hak untuk menjangkakan suatu AGM diadakan dan untuk mengundi, menghalang persidangan AGM 2010. Kepentingan majoriti harus mengatasi tujuh plaintif itu (lihat perenggan 22).

(3) Plaintif-plaintif gagal menunjukkan bahawa terdapat bahaya yang pasti bahawa aset-aset tersebut akan dijual. Tiada keterangan menunjukkan

bahawa sejak pemfailan tindakan ini hinggalah permohonan injunksi interlokutori dibuat, defendan pertama telah menjual aset-aset gereja tersebut atau berniat berbuat sedemikian. Oleh itu, plaintif-plaintif tidak menunjukkan apa-apa isu serius untuk dibicarakan dan tiada sebab untuk menghalang defendan pertama dan kedua daripada mengadakan AGM 2010 tersebut (lihat perenggan 21, 23 & 25).

(4) Permohonan injunksi Erinford yang mana kemudiannya difailkan oleh plaintif-plaintif, dibenarkan sementara kemuktamadan rayuan plaintif-plaintif terhadap keputusan menolak permohonan injunksi interlokutori (lihat perenggan 26).]

Notes

For cases on Erinford injunction, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 2939–2947.

For cases on interlocutory injunction, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 3224–3348.

Cases referred to

Chin Mee Keong & Ors v Pesuruhjaya Sukan [2007] 6 MLJ 193; [2007] 5 CLJ 363, CA (refd)

Sivaperuman v Heah Seok Yeong Realty Sdn Bhd [1979] 1 MLJ 150; [1978] 1 LNS 184, FC (refd)

Taff Vale Railway Co, The v The Amalgamated Society of Railway Servants [1901] AC 426, HL (refd)

Legislation referred to

Companies Act 1965
Societies Act 1966
Trustees (Incorporation) Act 1952

Alexis Diana (Lilian Siew and Allen Lopez with her) (A Diana & Co) for the plaintiffs.

KK Wong (Karen Lee with him) (Wong Kian Kheong & Partners) for the first and second defendants.

Kiranjit Kaur (Manjit Singh Sachdev Mohammad Radzi & Partners) for the third defendant.

Aziah Ali J:

[1] The first to the sixth plaintiffs as voting and concerned members of the Calvary church, Kuala Lumpur are representing a class of members of the said church. The seventh plaintiff is an associate and concerned member and representing a class of members of the said church.

[2] The first defendant is the senior pastor of the church and has been a pastor for the last 37 years. The second defendant is the Board of Deacons whose membership is made up of seven deacons and the first defendant as chairman. The third defendant is the administrators and trustees of The Assemblies of God of Malaysia and is registered under the Trustees (Incorporation) Act 1952.

[3] By way of encl 19 the plaintiffs pray for an interlocutory injunction seeking the following reliefs:

1. Defendan Pertama dan/atau Defendan Kedua dihalang sama ada dengan sendirinya atau oleh pengkhidmatnya atau oleh ejennya atau sebaliknya, daripada mengadakan satu Mesyuarat Agung Tahunan (AGM) sepertimana yang ditetapkan pada 23 haribulan April 2010 atas arahan Lembaga Dekon Gereja Calvary sehingga penyelesaian pendengaran kes di hadapan Mahkamah yang mulia ini;
2. Defendan Pertama dan/atau Defendan Kedua dihalang sama ada dengan sendirinya atau oleh pengkhidmatnya atau oleh ejennya atau sebaliknya daripada menyingkirkan Plaintif-Plaintif serta mana-mana individu kelas yang terdiri daripada ahli-ahli Gereja Calvary daripada mempergunakan hak mereka dan keistimewaan rnereka masing-masing (Excluding the plaintiffs from exercising their rights and privileges of membership);
3. Defendan Pertama dan Defendan Kedua dihalang sama ada dengan sendirinya atau oleh pengkhidmatnya atau oleh ejennya atau sebaliknya daripada mengubah peraturan-peraturan (Rules and By Laws) yang terdapat pada Perlembagaan Gereja Calvary sehingga penyelesaian kes ini di Mahkamah;
4. Defendan Pertama dan Defendan Kedua dihalang sama ada dengan sendirinya atau oleh pengkhidmatnya atau oleh ejennya atau sebaliknya daripada melupuskan sebarang aset-aset kepunyaan Gereja Calvary tanpa pengindorsan secara bertulis daripada Defendan Ketiga dan/atau satu ahli jawatankuasa interim yang dilantik oleh Mahkamah bagi tujuan tersebut;
5. Defendan Pertama dan Defendan Kedua dihalang sama ada dengan sendirinya atau oleh pengkhidmatnya atau oleh ejennya atau sebaliknya daripada menandatangani sebarang cek dan/atau sebarang urusan transaksi tunai yang melebihi Ringgit Malaysia Lima Ribu (RM5,000.00) sahaja tanpa kelulusan secara bertulis dan tandatangan Defendan Ketiga dan/atau satu ahli jawatankuasa interim yang dilantik bagi tujuan tersebut;
6. Defendan-Defendan mengekalkan status quo sementara menunggu pendengaran permohonan Saman Dalam Kamar ini;
7. bahawa segala prosiding lain digantung sehingga pendengaran dan penyelesaian permohonan ini terlebih dahulu;
8. bahawa kos prosiding dan sampingan permohonan ini dijadikan kes dalam kausa, dan

9. lain-lain relif yang difikirkan adil dan suaimanfaat oleh Mahkamah yang Mulia ini.

Having heard the submissions I allowed only prayer 2 but in respect of the plaintiffs only and dismissed the other prayers. The plaintiffs now appeal against my decision.

BACKGROUND

[4] The plaintiffs filed this action for the following reliefs (encl 1):

1. bahawa Mesyuarat Agung Tahunan (AGM) yang dijalankan pada 19 dan 20 haribulan Jun 2009 masing-masing diisytiharkan tidak sah 'ab initio';
2. bahawa ahli-ahli jawatankuasa yang dilantik pada Mesyuarat Agung Tahunan (AGM) yang dijalankan pada 19 dan 20 haribulan Jun 2009 dibatalkan dan diisytiharkan tidak sah;
3. bahawa Defendan-Defendan memanggil (convene) satu mesyuarat istimewa (EGM) dalam masa 30 hari dari tarikh perintah mahkamah ini diberikan untuk membentangkan resolusi-resolusi yang dikemukakan oleh Plaintif-Plaintif;
4. bahawa pelucutan Dr. Lum Siew Heng sebagai ahli Gereja Calvary Kuala Lumpur pada 20 haribulan Mac 2009 dibatalkan dan diisytiharkan tidak sah 'ab initio';
5. bahawa kos prosiding ini ditangggung oleh Defendan-Defendan; dan
6. lain-lain relif yang difikirkan adil dan suaimanfaat oleh Mahkamah yang Mulia ini.

[5] The factual background are as narrated in the affidavit in support affirmed by the first plaintiff (encl 2). The plaintiffs are primarily dissatisfied with the management of the church accounts in particular with the transfer of funds to the Calvary International Ministries ('CIM'), an unregistered organisation established, controlled and owned by the first defendant. Amongst others on 21 June 2008 the fourth, fifth, sixth and seventh plaintiffs discovered that for the period from September 2002 till December 2007 RM1.9m had been transferred to CIM.

[6] On 16 April 2009 the plaintiffs submitted seven resolutions to be tabled at the annual general meeting on 19 June 2009 (exh A17). Except for the seventh resolution, all the other six resolutions which were earlier submitted to be tabled at the 2008 Extraordinary General Meeting ('the 2008 EGM') were rejected by the second defendant.

[7] The plaintiffs say that at the annual general meeting on 19 June 2009 ('the 2009 AGM'), contrary to the constitution, the second defendant decided not to table the resolutions for consideration by the members. By a letter dated 6 July 2009 the third plaintiff wrote to the third defendant to investigate the second defendant for breach of the constitution in rejecting the resolutions submitted by the first, second, third, fourth and fifth plaintiffs and the conduct of the third defendant's assistant superintendent in accepting and endorsing the decision of the second defendant. Getting no response the third plaintiff wrote again to the third defendant (exh A18).

[8] The third defendant replied on 18 August 2009 saying amongst others that they were satisfied that the third defendant's assistant superintendent has carried out his responsibilities fairly and without any prejudice. By a letter dated 17 July 2009 and 11 August 2009 the plaintiffs and concerned members of the church through their solicitors gave notice to the second defendant to hold an EGM specifically to table five resolutions. By a letter dated 27 July 2009 the second defendant rejected the request. The plaintiffs' solicitors then wrote to the third defendant to intervene but the third defendant declined as it was an internal church matter.

[9] The plaintiffs then wrote to the first defendant to reconsider the second defendant's decision not to hold an EGM as requested by the plaintiffs but the first defendant refused the request. The plaintiffs contend that by rejecting the resolutions submitted, the first and second defendants and the third defendant's assistant superintendent had violated their rights and the rights of other church members to vote on the resolutions at the 2009 AGM.

[10] With regard to the first defendant the plaintiffs aver that he has retired upon attaining the age of 60 years and his reappointment by the second defendant has to be ratified by the votes of at least two thirds of those attending the AGM in accordance with rule XI of the constitution of the church. But this was not done. Further the plaintiffs aver that the second defendant has breached rule IX of the constitution by preventing the resolutions submitted in accordance with the constitution from being tabled at the 2009 AGM thereby violating their rights as members to exercise their right to vote on the said resolutions.

[11] On 7 March 2010 the church issued a preliminary notice for the 2010 AGM to be held on 23 April 2010. The plaintiffs state that the present suit is still pending and further the notice of voting members pasted on the church's notice board shows 706 members as opposed to 866 members in 2009. The number of associate members is also reduced from 871 members in 2009 to 694 members for 2010. The plaintiffs are among those whose names have been

excluded from the notice which the plaintiffs say was done by the church without giving notice. Therefore the plaintiffs applied for the interlocutory injunction (encl 19).

[12] The plaintiffs contend that the notice of the 2010 AGM was issued by the Board of Deacons whose appoinment by the 2009 AGM is being challenged by the plaintiffs in this action. Therefore if the Board of Deacons is allowed to call for the 2010 AGM it will complicate the issues raised and challenged in this action. It is submitted that if the 2010 AGM is allowed to proceed, then the plaintiffs action will be rendered nugatory and academic.

[13] In the substantive application, one of the reliefs sought by the plaintiffs is for an order for an EGM to be held in order to allow the plaintiffs to table the resolutions that the first and second defendants had refused to allow in the 2009 AGM without giving the church members the opportunity to voice their opinions and to vote on the resolutions. Further the plaintiffs and other members have been excluded from the register of the church without being given an opportunity to defend themselves. The first and second defendants had relied on documents other than the Constitution of the church to justify the exclusion of the members which the plaintiffs aver showed the opportunistic and 'convenient' attitude of the first and second defendants. The plaintiffs contend that the first and second defendants had reclassified the members relying on outdated provisions in the constitution. The reclassification of the members has denied the said members their rights in particular their right to vote which is unreasonable, unjust and in breach of the rules of natural justice. The plaintiffs contend that the first and second defendants' action in reclassifying the members shows that the two defendants are capable of any action to eliminate the plaintiffs and other members who are perceived to threaten the defendants' positions. Therefore it is submitted that the first and second defendants have acted ultra vires the constitution which is a contract inter se among members. It is further submitted that the exclusion of the plaintiffs from the list of membership of the church is sub judice as the reliefs sought for in this action is connected to their membership. The plaintiffs aver that the assets of the church are under the control of the Board of Trustees and it is necessary to prevent the board from disposing of assets of the church by way of a court order.

[14] The plaintiffs further state that the 2010 AGM scheduled for 23 April 2010 ought to be stopped to enable a fair hearing of this suit. If the 2010 AGM is allowed to proceed, it will confer legitimacy on the current Board of Deacons appointed in the 2009 AGM whose appointments are under challenge in this suit. The first and second defendants will continue to administer and manage the financial affairs of the church. It will also allow the first and second defendants to continue to abuse their powers.

[15] Counsel for the plaintiffs submits that there are serious issues to be tried. On the issue of balance of convenience, counsel submits that the basic rights of the members will be prejudiced and this action will be rendered nugatory. Counsel submits that the damage that the plaintiffs will suffer could not be compensated by damages. On the other if an injunction is issued to stop the 2010 AGM, the defendants would not suffer any loss or damage. It is therefore desirable to preserve the status quo of affairs immediately preceding the filing of this suit.

[16] For the first and second defendants counsel submits that the plaintiffs' application for an interlocutory injunction ought to be dismissed for the following reasons:

(a) any injunction cannot be enforced against the second defendant as it is not a legal entity;

(b) there is no pre-existing cause of action against the defendants for the plaintiffs to be entitled to apply for the second, third, fourth and fifth prayers;

(c) the balance of convenience is not in favour of the plaintiffs because:

(i) there is sworn evidence that the defendants have no intention to:

(A) amend the church constitution; and

(B) dispose of the church's assets;

(ii) there are existing safeguards under the church constitution in respect of:

(A) amendments to the church constitution; and

(B) disposal of the church's assets;

(iii) the constitutional right and interest of the 1,400 members of the church must be weighed against individual complaints of the seven plaintiffs; and

(iv) the constitutional right of the church, as a religious institution, may be infringed; and

(d) the delay on the part of the plaintiffs in filing an application for an interlocutory injunction.

[17] Counsel for the first and second defendants submits that an injunction cannot be enforced against the second defendant as it is not a legal entity and not a natural person. Neither is the second defendant a company incorporated under the Companies Act 1965 or a society registered under the Societies Act

1966 or a partnership, unlike the third defendant which is incorporated under the Trustees (Incorporation) Act 1952.

[18] In respect of the first defendant it is submitted that the first defendant as chairman of the second defendant, all administrative powers including the power to convene an AGM vests in the second defendant and since no injunction may be enforced against the second defendant, likewise an injunction ought not to be granted against the first defendant.

[19] Counsel for the plaintiffs submits that the second defendant is a body whose members are appointed by members of the church with the first defendant as its chairman. Each member of the second defendant has been named and served with the originating summons. The second defendant has been entrusted to administer the church's affairs and the church is governed by its constitution. The church is an association of individuals or persons and is a lawful body subject to the Societies Act 1966 (*Chin Mee Keong & Ors v Pesuruhjaya Sukan* [2007] 6 MLJ 193; [2007] 5 CLJ 363). I agree with counsel for the plaintiffs and I find that the second defendant and by extension the first defendant as its chairman is amenable to an injunction (*The Taff Vale Railway Co v The Amalgamated Society of Railway Servants* [1901] AC 426 (HL)).

DECISION

[20] On the submissions by counsel for the first and second defendants that there is no pre-existing cause of action and delay, it is true that the facts show that this suit arises out of grievances with the conduct of the first and second defendants relating to the management of the church and its assets, the conduct of the 2009 AGM and the appointment of the first defendant. The present application for an interlocutory injunction is prompted by the notice calling for the 2010 AGM. The purpose of the interlocutory injunction is to prohibit the 2010 AGM from taking place and to prohibit the first and second defendants from excluding the plaintiffs from exercising their rights and privileges of membership.

[21] The injunction applied for by the plaintiffs include, inter alia, the prohibition on the first and second defendants from disposing of assets of the church and to limit financial transactions by the first and second defendants to not exceeding RM5,000 unless with the consent of the third defendant or a committee to be appointed. In *Sivaperuman v Heah Seok Yeong Realty Sdn Bhd* [1979] 1 MLJ 150; [1978] 1 LNS 184 the Federal Court had held that:

> It is quite established that an injunction for the preservation of property and other mandatory orders may only be granted in accordance with the principles applicable to the granting of interlocutory injunctions. It may be granted where the court is satisfied that there is a substantial question to be tried, and a case has been made out

for the preservation of that property (*Nicholas & Ors v Gan Realty Sdn Bhd & Ors* [1970] 2 MLJ 89; [1970] 1 LNS 90). And as in the *American Cyanamid* case [1975] AC 396 smack on the issue of injunctions, there is the requirement that before a court exercises its discretion in favour of granting an injunction:

(a) there must be a serious question to be tried;

(b) there must not be any delay by the appellants in making the application;

(c) that if the appellants were to succeed at the appeal, damages would not be adequate compensation for its loss;

(d) that the balance of convenience lies in its favour; and

(e) the appellants must demonstrate evidence that its financial undertaking given to court is solid and worth powder and shot; and

(f) there are special circumstances in its favour including the justice of the case.

At this interlocutory stage it is not the function of the court to resolve the issues on conflicting affidavit evidence, inclusive of difficult questions of law that require detailed argument or mature considerations.

[22] The plaintiffs contend that following the 2010 AGM to proceed would mean conferring legitimacy on the appointment of the current Board of Deacons appointed in the 2009 AGM whose appointments are under challenge in this suit. The first and second defendants will continue to administer and manage the financial affairs of the church and continue to abuse their powers. It is submitted that these are serious issues to be tried. However I am persuaded by the submissions by counsel for the first and second defendants that the plaintiffs are only a minority compared to the 1,400 members of the church. These members have a right to expect an AGM to be held and to vote. I agree with counsel for the first and second defendants that it is unjust to the other church members to prohibit the convening of the 2010 AGM. Further the first defendant in his affidavit in reply avers that the AGM has to be convened after the end of the financial year not later than June and the financial statements of the church have to be tabled at the AGM. A new Board of Deacons has also to be appointed. I agree with counsel for the first and second defendants that in the event that this court holds that the appointment of the board and the first defendant to be invalid, an order for the first and second defendants to call for another AGM can be made.

[23] On the issue of assets, the first defendant in his affidavit has stated that there is no intention to dispose of any assets owned by the church and any disposal of immovable property requires a simple majority vote of the members. I agree with counsel for the first and second defendants that the plaintiffs have failed to show that there is any imminent danger that assets will be disposed of. There is no evidence to show that since the filing of this action

until this application for an interlocutory injunction is made, the first defendant has disposed of assets of the church or intends to do so.

[24] In respect of the church rules, I have no reason not to accept the averment of the first defendant that there is no intention to amend the rules. In any event such amendments require the consent of two thirds of the members. Further the first defendant avers that the plaintiffs' cause of action relates to the validity of the 2009 AGM but no application for an injunction was filed upon the commencement of this suit for reliefs that the plaintiffs now pray for in encl 19.

[25] Having considered the submissions of both parties I find that the plaintiffs have not shown any serious issues to be tried. I find no reason to reject the averments of the first defendant that there is no intention to dispose of any assets nor to amend the church rules. On the other hand the interests of the majority of the church members who are not parties to this action have to be considered. I do not find sufficient reasons to prohibit the first and second defendants from convening the 2010 AGM. To grant an injunction as applied for would deprive the other church members from exercising their rights as members to attend and to vote at the AGM. The balance of convenience is not in the plaintiffs' favour. Therefore I dismissed prayers 1, 3 and 4–7 of the application. I allowed prayer 2 but limited it to only the plaintiffs named in this action on the application by counsel for the first and second defendants. The plaintiffs are not prohibited from attending the 2010 AGM.

[26] Subsequently the plaintiffs filed an application for an Erinford injunction (encl 31) on the ground that if the 2010 AGM is allowed to be convened, it will render this action nugatory. Upon hearing submissions I allowed the Erinford application pending the disposal of this appeal against my decision refusing the application for the interlocutory injunction.

Application for Erinford injunction allowed and application for interlocutory injunction dismissed.

Reported by Kohila Nesan